



U.S. Department of Justice

United States Attorney
Southern District of New York

MEMO ENDORSED

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 11, 2019

BY ECF AND ELECTRONIC MAIL

The Honorable William H. Pauley III
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *United States v. Nicholas Joseph Genovese*, 18 Cr. 183 (WHP)

Dear Judge Pauley:

At yesterday's status conference in this case, this Court ordered that if defendant Nicholas Genovese elects to seek a pre-sentencing hearing pursuant to *United States v. Fatico*, 603 F.2d 1053 (2d Cir. 1979) to resolve any disputes of fact material to the Court's determination of the appropriate sentence to impose for the securities fraud offense to which the defendant has pleaded guilty, then any such *Fatico* hearing must take place on January 22, 2020. The Government and defendant Genovese, through his counsel, respectfully submit this letter to jointly propose the following schedule for disclosures and submissions in advance of any such *Fatico* hearing:

- Defendant Genovese must provide written notice to the Government by December 23, 2019 of whether or not he intends to seek a *Fatico* hearing, and if he intends to do so, specifying each dispute of fact that he wishes to resolve through a *Fatico* hearing.
- Counsel for the parties must file a joint letter with the Court by January 3, 2020 giving the Court notice of the parties' respective positions (or joint position, if they are in agreement) on whether or not a *Fatico* hearing will be needed, and on the questions of fact to be resolved through the hearing if such a hearing is needed.
- If the Court determines that a *Fatico* hearing is warranted, the parties must file any pre-hearing submissions relating to the *Fatico* hearing by January 16, 2020 and the parties must exchange by January 20, 2020 lists of all witnesses whom they intend to call at the *Fatico* hearing, copies of the exhibits they intend to introduce at the *Fatico* hearing and lists of those exhibits, and any witness-related materials subject to disclosure under 18 U.S.C. § 3500 or Federal Rule of Criminal Procedure 26.2.

The parties respectfully request that the Court approve the above-described schedule that the parties have jointly proposed for the timing of disclosures and submissions in advance of any *Fatico* hearing in this case.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By: /s/
Samson Enzer
Assistant United States Attorney
Tel. (212) 637-2342

cc: Alexander Eismann, Esq.

Application granted.

SO ORDERED:


WILLIAM H. PAULEY III
U.S.D.J.

December 12, 2019